

**From:** Jeff Breitner  
**To:** Microsoft ATR  
**Date:** 1/25/02 7:56pm  
**Subject:** Microsoft Settlement

January 24, 2002

8732 Sumpter Road  
Maybe, MI 48159

Renata B. Hesse  
Antitrust Division  
U.S. Department of Justice  
601 D Street NW Suite 1200  
Washington, DC 20530-0001

Dear Renata Hesse:

I am writing to express my displeasure with the proposed settlement between Microsoft and the USDOJ for Microsoft's proven illegal activities.

In the name of brevity, I'll keep my letter to three main points. First, how the proposed "opening" of API's, hooks and other areas of Microsoft products will not benefit other companies. I'll also note how Microsoft's acquiescence to allow computer manufacturers to modify the default installation of Windows on their computers isn't the alleged bargain. And finally, the main sticking point in the whole settlement is the federal government's seemingly blind-eye to the billions of dollars of revenue realized through Microsoft's crimes.

The proposed settlement would allow others access to inside information to Microsoft's API's. While this may seem a fitting way to re-introduce competition in the software industry, the language used in the settlement makes it clear that Microsoft still has a significant amount of control over what is actually divulged. The language states that Microsoft will have the ability to determine the suitability of the recipient of this type of information. Within the proposed settlement, there is little detail of who would be qualified and therefore it appears that those able to receive information on API's, hooks and software information is totally arbitrary and subject to the final review of Microsoft.

Further disturbing is the ability of Microsoft to have a unilateral veto of all requests of this type of information under the guise of software security. Simply put, Microsoft could say that the information could not be provided because it would constitute a security compromise of their products.

Open-source operating systems such as Linux or FreeBSD have lived with this situation for over 10 years and have used it to their benefit. Consequently, the ability to control API information as a security precaution seems to be nothing more than one way to slow or stop the dissemination of this information.

Armed with the ability to "lock-down" the API's and the Windows system itself, Microsoft could conceivably use this settlement as a way to thwart interoperability between Windows products and competing operating systems. Through crafty use of frequent Windows updates and patches, Microsoft could simply change its operating code to eliminate products such as Samba, and then point to this settlement as the permission to do so. Since it would be termed a "security" issue, the changes would remain within Microsoft's confidence, and the proposed settlement itself is used as a tool to continue Microsoft's monopoly.

Computer manufacturers and OEMs have complained bitterly over Microsoft's insistence that the appearance of Windows not be modified on personal computers. The settlement gives OEMs significant abilities to bundle products with the sale of the computer and operating system. While this certainly appears to be for the benefit of the consumer, it is blanket authorization for Microsoft to continue to use the monopoly on the desktop operating system to extend into other areas. Already with WindowsXP, Microsoft is demonstrating what would happen with this new-found freedom. Preferential treatment (if not outright advertising) for Microsoft properties exists for Internet connectivity, chat, instant messaging and other services whenever the consumer accesses these services through WindowsXP. This settlement is the government's authorization that Microsoft can use the desktop to continue to promote or even force consumers to use Microsoft services (e.g. Microsoft Passport), ostensibly because the OEMs are allowed to bundle their own services. Language in the settlement is absent that states how this bundling and presentation is to occur, which gives Microsoft incredible leverage over its competition.

The major point I have against this proposed settlement is the ill-gotten gains from Microsoft's abuse of their operating system monopoly. Simply put, I find it reprehensible that anyone associated with the justice department would consider letting Microsoft keep one penny of the billions of dollars raised through these abuses. The message the settlement sends is one of "crime doesn't pay unless you happen to be a large politically active corporation, then it pays handsomely". This is a terribly disturbing message considering the recent Enron debacle. Microsoft acted unfairly, engaged in illegal business activities, economically harmed the consumer and made billions of dollars doing it. They should be penalized and the penalty should commensurate with their earnings and worth.

As a personal note, when the DOJ started their lawsuit against Microsoft, I was vehemently against it. It was Microsoft's own behavior within the trial and it's business practices during and subsequent to the trial that has

changed my opinion of the company. They are a predatory company that would not hesitate to use any method for their profit. Their practices are deeply rooted within the company culture, and it is my belief that the only way to make this company "fly-right" is to bring them back to reality with the penalties that would be exacted upon me if I had stolen billions of dollars.

Thank you for your time.

Sincerely,

Jeffrey Breitner